

PRIVATE PROBATION. Board Case No. 12, 2004. Effective Date: April 27, 2005.

A Delaware solo practitioner agreed to accept a one-year private probation for violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules") in connection with failure to timely file and pay personal income taxes and the inaccurate reporting of same to the Delaware Supreme Court on two annual Certificates of Compliance. The private probation was offered by a panel of the Preliminary Review Committee ("PRC") and imposed with the consent of the lawyer. The lawyer admitted violating **Rule 8.4(d)**, which states that a lawyer shall not engage in conduct that is prejudicial to the administration of justice, by failing to timely file and pay personal income taxes for four years and by failing to accurately report the status of the income tax obligations for two years on the lawyer's Certificates of Compliance filed with the Supreme Court.

The Lawyers' Fund for Client Protection ("LFCP") had conducted a random audit of the lawyer's financial books and records. As part of the audit process, lawyers are required to provide proof to the auditor that they have timely filed and paid all tax obligations: corporate, employee, payroll, personal income tax obligations, etc. The audit revealed that the lawyer had maintained the law practice books and records in accordance with the Rules. The lawyer had failed to timely file and/or pay income tax obligations over a four-year period as follows:

1998

- failed to timely pay federal income tax obligation; paid February 2000 with interest and penalties;

1999

- failed to timely file federal income tax return. Filed December 2000; penalties and interest remain due;

2000

- all tax returns timely filed;
- failed to timely pay City of Wilmington net profits tax. Paid June 2004; penalties and interest paid in August 2004;
- failed to pay federal and state taxes; tax obligations remain due;

2001

- all tax returns timely filed;
- failed to timely pay City of Wilmington net profits tax. Paid June 2004; penalties and interest paid in August 2004;
- failed to pay federal and state taxes; tax obligations remain due.

The lawyer had failed to accurately represent the status of the above obligations on the lawyer's 2000 and 2002 Certificates of Compliance filed with the Delaware Supreme Court. In 2004, the lawyer filed amended tax returns for the years 1999, 2000, and 2001 and has retained a tax attorney to assist in drafting a repayment plan with the state and federal taxing authorities, once an accurate tax obligation is known. The lawyer's 2002, 2003, and 2004 personal tax obligations were timely filed and paid.

In offering the sanction of a private probation, the PRC considered the following mitigating factors: (1) the absence of a prior disciplinary record; (2) the lawyer's cooperation and full and free disclosure to the disciplinary authorities; and (3) the lawyer's remedial efforts to correct the deficiencies. In aggravation, the PRC considered the lawyer's substantial experience in the practice of law.

The lawyer must satisfy the following conditions: (1) pay ODC and LFCP costs; (2) provide proof of the exact amount of federal and state income tax liability and proof of payment of same within 90 days of the date of sanction; and (3) provide proof of timely filing and payment of 2004 income tax obligations (already provided). If the lawyer is not found, by a panel of the PRC, to have engaged in further professional misconduct during the one-year probationary period, the probation will be removed from the lawyer's formal disciplinary record and cannot be used in any subsequent disciplinary proceedings.